Saskatchewan
Agriculture
and Food

Estate Planning

For

Farm Families

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Foreword

Capital gains, capital gains exemptions, rollovers, reserves, incorporation, annuities, options to buy, joint tenancy, Registered Retirement Savings Plans--these are terms we all hear about from time to time. What do they mean? How do they relate to estate planning? This bulletin attempts to answer these and other questions about estate planning. The information in the bulletin is of a general nature and is not designed to replace professional guidance. After reading the bulletin, an individual will be better equipped to make estate planning decisions and to communicate his wishes to professional advisors. Because estate planning is an involved subject which can have major tax and legal implications, it is important to seek competent professional advice on particular problems.

Today, more than ever before, women own or control sizeable estates or are in situations where at some time in their lives they will have estates. Women as well as men should be knowledgeable about estate planning and contribute to family estate planning decisions.

Other publications available from Saskatchewan Agriculture and Food that relate to estate planning are as follows:

- Law For Saskatchewan Farm Families
- Managing Your Farm Income Tax Plan
- Farm Incorporation
- Land Rental Arrangements
- Crop Share Lease Agreement
- Cash Lease Agreement (Crops)
- Flexible Cash Lease Agreement (Crops)
- Farm Credit Management

The publication "Managing Your Farm Income Tax Plan" should be read for detailed income tax implications of estate planning.

This publication has been prepared by the Farm Management Section. The contributions of the many people that reviewed earlier drafts are acknowledged.

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Estate Planning for Farm Families

What is Estate Planning?

Estate planning is the organization of activities associated with gathering, saving, using and dispersing an estate to satisfy the goals and objectives of the estate planner. An estate consists of an individual's assets and liabilities. For a farm operator, these commonly include land, buildings, machinery, livestock, grain, feed, investments, savings, life insurance, personal possessions and debts owed to or by him.

Essentially an estate plan is a "blueprint" which outlines how the estate planner wishes to accumulate, own or use assets during life and how he or she intends to dispose of those assets both during life and after death. The estate planner has many "tools" available to carry out his plans. Each estate planning tool has specific uses, advantages and disadvantages. The estate planner selects a mix of estate planning tools to meet his wishes in the manner and sequence desired.

Why Plan?

An estate planner's goals and objectives can vary greatly depending upon his background, family size and general outlook on life. An individual will probably have several different goals and objectives and these will change with time. A few common objectives of farm operators are listed below:

1. To provide sufficient resources for the individual and their spouse's security and independence as long as they each live.

2. To provide adequate income protection for their dependents if one dies prematurely.

3. To maintain goodwill among family members and ensure that this goodwill will prevail after his death.

4. To pass on a viable farm operation to the next generation.

5. To provide for a reasonably fair distribution of one's estate among their beneficiaries.

6. To minimize income tax, legal fees, accounting costs and time and complications in transferring property to the next generation.

Who Should Plan?

Estate planning is not exclusively for the rich and the elderly. Any mature individual who has assets or dependants should carefully consider what they wish to be done with their assets or how to provide for their dependants, both during life and after their death. Once that decision is made, the next step is to choose a course of action which ensures that their desires will be satisfied.

It is important that women, as well as men, do estate planning. In the past, few farm women have owned assets or have been responsible for farm operating decisions. Consequently, few women have done estate planning. Today, more women are active in the ownership and operation of farms. Many bring assets into their marriages or acquire assets through off-farm work. Under the Matrimonial Property Act, the contributions of both husband and wife (money or otherwise) to the development of a farm is considered when farm assets are divided. Thus, women should not only share in family estate planning decisions but should also do estate planning on their own behalf.

Estate planning is very personal since goals and objectives predominate in the plan. In addition, the planner often must take account of the objectives of other family members if his own wishes are to be realized. For example, the father who wishes to transfer his farm to his son must take into account the son's career choice. **To avoid conflicts requires serious open family discussion and honesty regarding each family member's goals and objectives.**

When to Plan?

Plan early in life. An estate plan can be used to acquire, save and use assets as well as to dispose of them. Thus, an estate plan is very useful as soon as an individual has realistic life goals relating to his or her own estate.

Review and revise your estate plan often since the legal, tax, and financial consequences of various courses of action may change over time. As well, a person's needs, assets, objectives and expectations change during life. For example, the beginning farmer is concerned with acquiring sufficient resources to obtain an economic farm unit. Because it is difficult to save sufficient capital, he may have to sacrifice non-farm goals and seek credit backing. He may be helped by his parents in the form of an operating arrangement and/or transfer of assets. These problems are often accentuated by the need for sufficient income to support a young family.

On the other hand, the farm operator who is approaching retirement has other concerns. How does he provide sufficient income for retirement? How should he dispose of the farm? How can he minimize tax? Is there a child who wishes to farm? If so, should he transfer the farm outright or should he farm together with the child? With such changes in circumstances and hence objectives, an estate plan should be reviewed periodically throughout the planner's lifetime. Estate planning is a continuous process, not a once-in-a-lifetime exercise.

Steps in Estate Planning

The success of an estate plan depends upon the care and consideration with which the estate planner follows through the estate planning process. There are six important steps in the estate planning process and these must be taken in the following order.

1. Identify Objectives

You must first identify clear objectives regarding what you wish to achieve with your estate during life and what you wish to happen to it after your death.

2. Make an Inventory of Your Estate

To develop a comprehensive plan you must know what your assets and liabilities are.

3. Analyze Alternatives

There may be several tools or alternate courses of action possible to achieve your objectives. Seek information on the costs and benefits of each alternative.

4. Choose Alternatives

At this step you are ready to choose an alternative or mix of alternatives which will achieve your objectives.

5. Implement Your Plan

With professional help from a lawyer or accountant you can implement the plan at this stage.

6. Review Plan

Changes in taxes, laws and personal and family situations necessitate periodic review and revision of the plan.

Factors to Consider in Estate Planning

The following factors should be considered when developing an estate plan:

1. Equity

The estate planner usually tries to plan an **equitable** (but not necessarily equal) division of assets, bearing in mind the age, education, relationship and needs of the beneficiaries. An infant child or an infirm child is commonly given a larger share than an independent child who has been established in his own vocation with the parent's help. The plan should also take into account income needs of the dependants including the spouse. Special consideration is often given to children who helped the farm business.

2. Retirement Needs

Careful consideration should be given to retirement income needs and how they will be met. The need for capital and income in retirement depends largely on the planned age of retirement and the

choice of retirement life styles. The impact of inflation must not be overlooked.

Income for retirement can be obtained from several different sources. These include sale of the farm business, renting property, pension plans and other investments.

3. Tax Laws

Effective estate planning can be accomplished only by being familiar with the legal implications and costs of the alternatives. Laws and income tax regulations change from time to time. Such taxes, regulations, and other costs, should be considered in determining the most effective method of owning and disposing of property. However, personal objectives and needs should normally be considered ahead of tax implications in choosing among alternatives.

4. Business Arrangements

Business agreements or contracts made during an individual's life have a bearing on the type of assets that may be passed on in a will. The terms and conditions in contracts or agreements (e.g. companies, partnerships, leases, buy and sell agreements, agreements for sale, options to buy, and joint property) must be considered in property transfers and in drawing up a will.

5. Net Worth

The net worth of an individual should be determined from time to time, particularly when making a change in the estate plan. A good set of records will provide the necessary information. A net worth is simply the fair market value of all assets less liabilities. The fair market value of an asset is the trading price between a willing buyer and a willing seller who are unrelated.

In determining net worth include the fair market value of all farm assets such as land, machinery, equipment, buildings, grain, roughage and livestock. Also include interest in joint property, shares in companies, patronage earnings retained, pension funds, insurance proceeds, personal property and any amounts owed to you.

Liabilities include all debts of the estate, personal and business, as well as income tax that would be payable. Also included are the expenses of settling the estate including probate and court fees, legal fees and funeral expenses.

6. Keeping the Farm Intact

The majority of farm units are not large enough to provide an adequate resource base for more than one operator. In most cases, the estate plan should attempt to transfer the farm unit intact to the individual that is farming or intends to farm. This can be accomplished by sale, lease with option to purchase, gift, bequest or a combination of these methods.

There should be a will which clearly outlines how the estate is to be distributed upon the individual's death. Provisions can be made for the person receiving the farm to pay off the other beneficiaries. Keeping the farm intact is less important where none of the family members wish to farm or where the farm is very large.

7. Maintain Family Goodwill

Estate planning has many emotional implications for the people involved and can often result in family disagreements and feelings of unfair treatment. Parents should attempt to maintain goodwill among all family members and plan in such a fashion that family goodwill will continue after the death of the parents. The key to maintaining family goodwill is that no family member be surprised. This can be accomplished by open family discussions of all plans. Each person should clearly understand where he stands in order to make long range plans. In particular, a farming child should be informed of what his share of the estate will be. Uncertainty results in less efficient farm operation, hinders long term plans, and causes many children to leave the farm.

8. Adequate Records

The need to retain good personal and business records cannot be overemphasized. The administrators and beneficiaries of an estate can become very confused and frustrated if adequate records are not readily available, resulting in costly and time consuming administration. Securities,

bank accounts, life insurance policies and receivables may be forgotten or important payments may be overlooked. There may be a problem of providing proof of payment of debts and filing the last income tax return will be difficult. Without good business records beneficiaries may find it difficult to assume management of the business.

A good set of records would include descriptions and locations of all assets including securities, bank accounts, safe deposit boxes, insurance policies, and debts owed. Liabilities should be listed showing the creditor and the amount owed. The location of important documents such as land titles, leases, sales agreements, cancelled cheques and tax forms should be indicated. Information that will assist in settling an estate which is not contained in the farm records should be listed in an estate checklist. A sample Estate Checklist is included in Appendix A.

9. Organization of the Estate Plan

As indicated on the following pages, there are several estate planning tools. Seldom will one tool alone achieve all the wishes of the estate planner. Appropriate tools should be selected carefully and the resulting mix of tools must be complementary and comprehensive if the objectives of the plan are to be achieved.

10. Competent Advice

Farm families should seek the advice of individuals knowledgeable in estate planning. These include lawyers, accountants, and representatives of trust companies, insurance companies, the Taxation Division of Revenue Canada, Saskatchewan Agriculture and Food, and Rural Development. See the last section of the bulletin entitled "Additional Information" to obtain addresses for the latter two agencies and other useful information sources.

Financial Planning for Retirement

In developing an estate plan, the first priority is to provide for economic security in the retirement years. In retirement, roles, lifestyle, location, income patterns and needs change. These changes, along with the problem of inflation make it difficult to plan accurately for retirement even within a few years of retirement. Often the retirement planning is done within the year before retirement, too late to prevent income problems in retirement.

Despite the difficulty of planning at an early age for financial security in retirement, the young farm operator is wise to consider what income objectives he has for retirement. The following factors relate to retirement objectives:

1. Lifestyle

Whether you wish to have a quiet modest retirement or to enjoy luxuries that you could not afford prior to retirement can affect income needs.

2. Location

Another important decision relates to where you wish to retire, on the farm, in a local town, in a nearby city or out of province. Each alternative has different consequences with regard to costs such as housing, food, utilities, taxes, moving and travelling.

3. Housing

The type of housing chosen (i.e. new house, old house, mobile home, condominium, apartment) has a bearing on such costs as rent, taxes, maintenance and insurance as well as the need for money to invest in the home.

4. Inflation vs Fixed Income

Most types of retirement income are relatively fixed and are vulnerable to inflation which erodes the purchasing power of that income. Consequently, you must allow for inflation in estimating your retirement needs.

5. Off-Farm Investments

The type of investments you have will determine the amount of income from investment, the security you have, when you will receive income, and whether or not you can liquidate the investment quickly for cash.

By planning for retirement early in life, you can provide for security in retirement in different ways, with some variation in the amount of risk involved. Examples are: building up capital in the farm business, stocks, bonds, mutual funds, real estate, life insurance and retirement savings plans. Listed below are a number of factors that affect the amount of money available for retirement.

Canada Pension Plan

The Canada Pension Plan is a compulsory federal social security program designed to provide some protection against the financial problems which may arise at retirement, disability or death.

1. Contributions

Everyone between the ages of 18 and 70, whose earnings exceed a specified amount must contribute to the Canada Pension Plan. Contributions are calculated on the tax return for self-employed earnings and are deducted from the wages of employees. The maximum contributions level is changed annually according to a cost of living index.

Farmers contribute mainly on their "self-employed earnings". This is essentially "net income from farming" but does not include rental income where more than one-half of the gross farm income consists of rental income.

Canada Pension Plan contributions are based on net income rather than taxable income. Therefore, it is possible to make contributions to this plan even if income tax is not payable. In some situations it may be an advantage to claim less capital cost allowance or utilize the optional inventory adjustment in order to increase the contributory earnings. While this increases pension benefits at retirement, it may have the immediate disadvantage of increasing income tax payable.

2. Benefits

Benefits are taxable and are based on earnings averaged over the number of years the taxpayer could have contributed. Certain residence requirements must be met to be eligible for benefits. The types of Canada Pension Plan benefits are as follows:

(a) Retirement pension (can commence at any time between ages 60 and 70).

(b) Disability pension for those unable to work.

(c) Widow's pension for the deceased's spouse.

(d) Child benefits for dependent children of a deceased person.

(e) Lump sum payment to the deceased's estate.

Old Age Security Pension

Canadian citizens over the age of 65 years are entitled to the Old Age Security Pension in addition to the retirement pension under the Canada Pension Plan. Benefits are taxable. To be eligible, one must also meet certain residence requirements.

For those pensioners whose total incomes are very low, the Guaranteed Income Supplement is available in addition to the Oid Age Security Pension. Payments are not subject to income tax. For additional information about either Old Age Security of Guaranteed Income Supplement, contact Health and Welfare Canada (address in section on where to obtain additional information). Note: Persons contemplating the sale or transfer of property that will result in a taxable capital gain should recognize that taxable capital gain is income for the purpose of determining eligibility for the Guaranteed Income Supplement.

Registered Retirement Savings Plans

Registered retirement savings plans (RRSPs) enable an individual to make tax deductible contributions to a savings plan which builds a fund for retirement. The income earned in the plan is not subject to tax until withdrawn.

A self-employed Canadian taxpayer who has not reached the age of 71 can contribute 20% of his earned income up to a maximum of $7,500 per year to registered retirement savings plans. For individuals already covered by a registered pension plan where the employer contributes to the plan, the maximum total deduction including the individual's contributions to a registered pension

plan is $3,500 or 20% of earned income, whichever is the least. The taxpayer's earned income includes net income, salary or wages, pension benefits, alimony or separation allowance, death benefits, royalties, business or rental income from real property (e.g. land and buildings) less any business or rental losses. Earned income does not include investment income from stocks, bonds, mutual funds, guaranteed investment certificates and bank accounts. Taxable capital gain is also excluded. Contributions made during the year and within 60 days after the year end are eligible as deductions from income.

A husband may contribute all or part of his allowable limit to an RRSP for his wife. This allows a husband and wife to split their retirement income and usually reduces the total tax payable since they usually have higher total deductions as individuals than as a couple. For example, if both husband and wife have life annuities purchased from RRSP funds, they could each use the 17% pension income tax credit (maximum $170) that is used to reduce federal income tax.

Funds withdrawn from an RRSP are taxable in the year in which they are withdrawn. Beginning in 1986, partial withdrawals from existing RRSPs are permitted. The partial withdrawal is taxable income, while the balance remaining in the RRSP continues to be sheltered from taxation. An RRSP must be amended to allow partial withdrawals.

To average out RRSP income over a number of years, a tax payer may at any time prior to age 71 use the funds to purchase one of the following:

1. A life annuity which provides him with at least one payment per year for life.

2. A life annuity with a guaranteed term which pays out throughout his life but guarantees payment for a specified number of years and pays out the balance to the estate should he die before the end of the term.

3. An annuity with a term in length equal to 90 minus the taxpayers age.

4. A Registered Retirement Income Fund which pays out increasing amounts each year up to his 90th birthday. Any balance remaining at death (before 90) is paid out to his estate.

New Pension Rules Proposed for 1991

Beginning in 1991 new pension rules are scheduled to begin. Contribution limits to RRSPs will be 18 percent of earned income in the previous year. (For example, 1991 contribution limits will be based on 1990 earned income). Maximum contributions will be as follows:

Year	Limit
1991	$11,500
1992	12,500
1993	13,500
1994	14,500
1995	15,500

An individual who does not contribute to the limit in a year, may carry the unused portion forward up to seven years. Taxpayers who contribute to a Registered Pension Plan (RPP) or Deferred Profit Sharing Plan will have their maximum RRSP contribution limit reduced by what is referred to as a "Pension Adjustment". The Pension Adjustment for individuals contributing to a money purchase RRP will be the total of the employee and employer contributions. The Pension Adjustment for defined benefit RPPs will be more complex but will reflect the present value of benefits up to the previous year. This figure will be calculated annually by Revenue Canada.

Further information on RRSPs is contained in Saskatchewan Agriculture and Food's publication "Managing Your Farm Income Tax Plan". Readers are cautioned to check current rules regarding RRSP contributions with Revenue Canada.

Life Insurance

The main purpose of life insurance is to provide income protection for dependants in the event of the breadwinner's early death. In addition it can provide cash to pay funeral expenses, legal fees, debts, and various taxes that are due on death. In this way life insurance can assist the transfer of the family farm to the next generation.

Life insurance is often used in conjunction with an "option to buy" or "buy-sell" clause in a partnership, joint venture, or corporation. If a

partner dies the proceeds from insurance will provide funds for the remaining partner to purchase the deceased partner's interest, enabling him to continue the farm business.

The amount of insurance required depends upon individual preferences and circumstances. Factors to consider are the farmer's age, family responsibilities, attitude towards risk, debts, and the amount of readily available income from other sources such as cash on hand, farm inventories and investments. The young farmer with a large mortgage and a family to support and educate should have life insurance. At this stage he needs protection at the lowest available cost rather than a savings insurance policy. As the farmer grows older, the need for protection decreases. His net worth has increased while his family responsibilities have decreased. However, there may be medical bills, funeral expenses, legal fees, debts and taxes to pay. Life insurance may be required to cover these costs and keep the farm intact.

The life insurance policy can be owned by the beneficiary in order to reduce legal fees and other complications in settling the estate. When death occurs the insurance does not become part of the estate. It is paid directly to the beneficiary and could have the effect of reducing the size and complexity of the estate, hence reducing administration costs. A wife may own a policy on her husband's life even though she pays the premium from cash gifts received from her husband.

Types of Life Insurance

All life insurance policies fall into two categories: term insurance and permanent insurance.

1. Term Insurance

Term insurance covers a specified period of time. At the end of this period, the insurance protection lapses and no cash surrender value is available. The face value of the policy is paid out if the policyholder dies during the term of the insurance.

Term insurance is available in two basic forms. These are level term or decreasing term. Level term insurance remains the same over time. The amounts of insurance coverage declines as the policyholder ages with decreasing term insurance. Where your net worth increases as you grow older and less protection is needed, reducing term insurance may be a good choice.

Reducing term insurance is very cheap insurance and is often used to cover outstanding mortgages. If the creditor requires that life insurance be assigned to him as security for a business loan the cost of the insurance is deductible as a business expense.

A term insurance policy should allow for conversion to another type of policy. This option enables the policyholder (during a specified period) to convert the insurance to a permanent policy without the need for a medical examination but at a higher premium.

2. Permanent Insurance

Permanent insurance provides a combination of protection and savings. For this reason it has a higher premium than term insurance. If the insured should cancel the policy it has a "cash surrender value" which is the savings part of the policy. There are three types of permanent insurance.

(a) Whole (Ordinary) Life

This is insurance for the whole of life with premiums payable in the same amount each year until death or until the policy owner wishes to discontinue paying premiums and select one of the optional benefits. Next to term insurance it offers short term or lifelong protection at the lowest premium.

(b) Limited Payment Life

This policy provides insurance for the whole of life, but requires that the premiums be paid for only a limited period of time. Premiums are higher than for whole life but so is the savings part of the policy.

(c) Endowment Insurance

The term "endowment Insurance" describes a policy which provides for payment of the face

amount at the end of the endowment period (e.g. twenty years for a twenty year endowment). Should the insured die before the policy matures, the face amount of the policy is paid to the beneficiary. With endowment insurance, the investment element is more important than in ordinary life or limited payment policies. Consequently, it has the highest premium.

When you buy life insurance consider the risks, types and costs of insurance, and alternative uses for the money. In most cases, the savings portion of a life insurance policy offers a lower rate of return on your investment. In these situations you would be further ahead to purchase low premium term insurance and invest the amount saved in premiums elsewhere.

Consider a guaranteed insurability option in either a term or permanent policy. This allows the individual to purchase additional amounts of life insurance in the future, regardless of health.

When buying life insurance, find an agent who is willing to discuss term insurance as well as permanent insurance.

Tax Credits and Deductions

Tax credits for persons over age 65 and for pension income as well as the capital gains exemption reduce the income tax burden for retired people.

1. Tax Credit for Persons Age 65 and Over

A person age 65 or older may deduct from federal tax a tax credit of $550.

2. Pension Income Tax Credit

Pension income tax credit is 17% of qualifying income (maximum $170 per year).

3. Capital Gains Exemption

This policy provides for a tax exemption on the first $100,000 of capital gain. There is a $500,000 capital gain exemption for qualified farm property and shares in a small business corporation. The combined exemption for all types of capital gain is $500,000.

Except for the capital gains exemption, if your spouse qualifies for the above credits but has too little income to fully utilize them, you can transfer the unused portion to your tax form.

Estate Planning Tools

Certain estate planning tools are used during the lifetime of the estate planner; others take effect at death. Some of the tools are methods of transfer, others are types of business arrangements and ways of jointly owning property designed to facilitate the ownership transfer desired by the estate planner. Various means can be used in transferring farm property from parents to other family members. In working out transfers, carefully assess your individual situation, determine the important needs and objectives, and understand the related tax implications. Seek competent professional advice to ensure that your objectives are fulfilled and that taxes are minimized. Detailed information on taxation is found in the publication "Managing Your Farm Income Tax Plan" available from Saskatchewan Agriculture and Food.

Transfer By Sale

Tax Implications of Transfer by Sale

When transferring farm property by sale or gift, capital gain will occur to the extent that the price exceeds the adjusted cost base. The term "Adjusted cost base" refers to either the original cost or the value at December 31, 1971, plus certain selling costs. Since land values have increased considerably since 1971, substantial capital gain could occur for the seller or donor (giver) of property. The "taxable capital gain" is 75% of total capital gain (it was 2/3 in 1988 and 1989, and 1/2 prior to 1988).

Lifetime Capital Gains Exemption

Up to $500,000 of capital gains ($375,000 of taxable capital gains) realized on the disposition of qualified farm property and shares in a qualified small business corporation may be free of tax. For all other types of capital property, the exemption is

limited to $100,000 of capital gains ($75,000 of taxable capital gains).

The capital gains exemption is a cumulative lifetime limit for each Canadian resident taxpayer. Trusts and corporations do not qualify for the exemption although individuals owning shares in a corporation may use the exemption to offset capital gains realized on the disposition of such shares.

Qualified Farm Property

Qualified farm property is determined by the following rules:

i. The property must be owned by:

- the individual, or
- the individual's spouse, or
- a partnership in which the individual or spouse of the individual has an ownership interest

ii. Property includes:

a. real property (land and buildings) or eligible capital property used in a farming business in Canada by any of the following:
   - the individual
   - specified family members of the individual which include a spouse, children, grandchildren, great-grandchildren, and parents
   - a family farm corporation or family farm partnership in which the individual or any specified family members owned a share or interest

b. shares owned by the individual or the spouse of the individual in a family farm corporation

c. an interest owned by the individual or the spouse of the individual in a family farm partnership

iii. Real property and eligible capital property acquired before June 18, 1987 will be considered to be used in a farming business in Canada if the property was used by the individual, any of his specified family members or a corporation or partnership as defined above in:

a. the year the property is sold, or
b. for at least five years during which the property was owned by the individual, any of his specified family members or a family farm partnership in which the individual or any specified family member had an ownership interest

iv. Real property and eligible capital property acquired after June 17, 1987 will be considered to be used in the business of farming in Canada if the property was owned for at least 24 months prior to its disposal by the individual, any specified family members or a family farm partnership in which the individual or any specified family members had an ownership interest, and

a. for at least two years while the property was so owned, the individual or any specified family members was actively engaged on a regular and continuous basis in the business of farming in Canada and such a person reported gross farm revenue that exceeded income from all other sources for the year, or
b. for at least 24 months while the property was so owned, it was used by a family farm corporation or family farm partnership in carrying on the business of farming in Canada during which time the individual or any specified family members were actively engaged in that farming business.

Implications:

1. A taxpayer who had qualified farm property dies and leaves his land to his widow. The widow immediately has qualified farm property.

2. A child who is not a farmer, purchases farmland in 1988 and leases it to his father. The father uses the land in a farm business for two or more years and has gross farming income in excess of all other income sources for at least two years during the time the child owns the property and during the time the father farms the land. The child would have qualified property.

3. A family farm partnership can sell real property and have the capital gains exemption apply.

It should be noted that even though the taxable capital gains (75% of total capital gain) realized on the sale of farmland may be offset with the capital gains exemption, the non taxable portion (25% of total capital gain) may be subject to minimum tax. Minimum tax is likely to be a factor in tax planning if the total capital gain is quite large.

Cumulative Net Investment Losses (CNIL)

The ability to utilize the capital gains exemption to offset taxable capital gains is restricted by cumulative net investment losses (CNIL) outstanding at year end.

CNIL exists if investment expenses exceed investment income.

Investment income includes: interest, taxable amount of dividends, net income from rental property, 50% of income from recovered exploration and development expenses and income from partnerships in which the taxpayer is a limited partner.

Investment expenses include: interest and carrying charges on income producing property (not business property), expenses deducted for partnerships in which the taxpayer is a limited partner, losses from rental property, and 50% of resources and exploration expenses.

CNIL is calculated each year and includes balances from previous years commencing in 1988. CNIL does not reduce the capital gains exemption but can defer the right to use it.

Minimum Tax (MT)

Minimum tax (MT) became effective in 1986. Its purpose is to ensure that certain high income taxpayers who use tax shelters and receive "tax preference" income items pay some income tax each year.

Tax preference items include such things as the non-taxable portion of capital gains, the cash amount of dividends, capital cost allowance claimed in MURBs and Canadian films, deductions for drilling funds and flow-through shares, contributions to RRSPs and RPPs and the Investment Tax Credit.

The MT is likely to have the greatest impact on farmers who sell or transfer land and use the Capital Gains Exemption. The Capital Gains Exemption can offset the taxable portion of capital gains, however, the non-taxable portion may be subject to MT. MT reduces but does not eliminate the benefit of Capital Gains Exemption.

The amount of MT payable in excess of regular tax in any year may be carried forward for up to seven years and deducted from regular tax to the extent that the regular tax exceeds the MT payable in that year. MT is not applicable in the year of a taxpayer's death.

For farmers, a couple of exclusions from MT apply. Firstly, rights and things of a deceased taxpayer are not subject to MT. Secondly, MT is not calculated in the year in which a Five-Year Block Average is elected. It may be prudent for a farmer to keep his Five-Year Block Average election available for those years in which MT may be applicable. Block averaging is being phased out. The last block average must include the year 1987.

Capital Gains Rollover

In certain situations, property can be transferred between family members without incurring an immediate capital gain or recapture of capital cost allowance. This is called a rollover. The transfer of the property takes place at a price which creates no capital gain for the transferor and leaves the new owner in the same tax position as the transferor. The capital gain is not avoided but is deferred. All transfers between spouses and some transfers of farming assets to children can qualify for rollovers.

Rollovers Between Spouses

In a spouse to spouse transfer of any asset, no capital gain or recapture of capital cost allowance will arise if the property is gifted or the spouse receiving the property does not pay a price that is more than the asset's adjusted cost base. The other conditions necessary to qualify for the rollover are

that both spouses must be residents of Canada and the property is a capital property.

In the case of a transfer at death, the property must vest indefeasibly in the surviving spouse within 36 months of the death.

In a rollover of farm land to a spouse, it is not necessary that the land be used in the business of farming by someone in the family as is the case when farm land is transferred to a child.

Property can be rolled over to a spousal trust. However, to accomplish this specific rules must be followed, The surviving spouse must be entitled to all the income arising from the property during the survivor's life and no other person is entitled to receive or use any income or capital of the trust. The property must be Canadian property and vest indefeasibly in the trust within 36 months of death.

Trust are commonly set up when a taxpayer dies. It is used to allow the surviving spouse to receive the income from property but ultimately provide for the passing of property to children after the surviving spouse's death.

A spousal trust can be used to achieve a rollover of farm property to a child that might otherwise be impossible (see rollovers to children).

The farm property must be used in the business of farming by someone. However, it is not necessary for the taxpayer, the spouse or a child to be using the property in a farming business either when the trust is established or when the property is transferred from the trust to a child. (The child must be a resident of Canada to be eligible for rollover from the trust to the child.) Therefore, a landowner who leases land to someone other than a spouse or child could achieve a rollover to child through an intervening spousal trust.

Farm property can be rolled over to children through a life estate to a surviving spouse. A farmer could direct in his will that, for example, some farmland, is left in a life estate whereby the surviving spouse is entitled to the income from the land but upon her death the land passes to the children. For the rollover to the children to occur, the land must be used in the business of farming immediately before the life estate is created by the farmer, his spouse or a child. (Note that this requirement is different than for a spousal trust.) Once the life estate is established, then it doesn't matter who farms the land until the land finally passes to the children.

A taxpayer can elect to transfer property to a spouse at fair market value, rather than at its adjusted cost base. (note that the elected value must be either fair market value or adjusted cost base and nothing in between.) The transfer at market value may result in a capital gain. This election may be beneficial if there are accumulated losses that can be offset with taxable capital gain on the property transferred. It would also enable a taxpayer to utilize the capital gains exemption.

The attribution rules may apply because of property transfers to a spouse. Future rental income (but not farm income) and capital gain may be taxable in the hands of the spouse who transferred the property. (See Section under "Splitting Income")

Rollovers to Children

Farm land, depreciable assets under the Part XI (diminishing balance) method of capital cost allowance, ownership interest in a family farm partnership and shares in a family farm corporation or family farm holding corporation can be rolled over to children without capital gain arising immediately. The following conditions apply:

1. Children include grandchildren, great-grandchildren, sons and daughters-in-law, illegitimate children, legally adopted children, stepchildren, and foster children. A child also includes a person who, before age 19, was wholly dependent upon and under the custody and control of the taxpayer.

2. The property must be used in the business of farming by the taxpayer, his spouse or any of his children immediately before the transfer takes place. It is not necessary for an individual to do all or even a major portion of the work on a farm to meet the "used in the business of farming" requirement. Virtually all of the farm work could be hired on a custom basis providing the individual assumes a portion of the risk of the operation and provides management.

Land which is leased to anyone other than a spouse, or a child, is not considered to be used in the business of farming. However, farm land leased by a taxpayer to his family farm corporation or to his spouse's or child's family farm corporation or partnership will qualify for a rollover.

3. For rollovers (and the capital gain exemption) at death the property must vest indefeasibly in the child within 36 months of the death of the transferor. To vest indefeasibly means that a person acquires right to absolute ownership of the property and the rights of ownership cannot be defeated by any future event even though the person may not be entitled to the immediate enjoyment of all the rights to ownership. A full explanation of this term is contained in Revenue Canada's Interpretation Bulletin #499 - "Meaning of Vested Indefeasibly". For transfers at death, transfer value can be elected any where between adjusted cost base and fair market value of the property.

4. It is not necessary for a child to use the property in the business of farming after the transfer takes place.

5. The child must be a resident of Canada.

Note: A rollover is permitted of a family farm from a child to a parent where the child obtained the property from a parent and where the property is transferred back to the parent upon the death of the child.

6. For transfer during the taxpayer's lifetime the amount of capital gain depends upon the sale price. If the price is at or below the adjusted cost base, the transfer will be deemed (considered) to take place at the adjusted cost base and there will be no capital gain. However, if the price is between the adjusted cost base and the fair market value, the transfer takes place at the actual sale price and the difference between the price and the adjusted cost base is capital gain. If the sale price is greater than the fair market value, the transfer will be deemed to have taken place at fair market value. The amount of tax paid will depend on the availability of capital gains exemption, the use of the rollover provisions and the Minimum Tax.

7. A rollover may occur when land is transferred to a child subject to the retention of life interest in the land. This is referred to as an inter vivos life estate. The child becomes the owner of the property but the transferor is entitled to the income from it as long as he lives. The income could be in the form of a rental paid by the child to the transferor. There are several implications to this arrangement.

- The child is assured of ownership of the land
- The transferor is assured of income (rent) from the land while alive
- The child may use the land as security to purchase other property
- A capital gain rollover can occur

Reserves

The capital gain realized on the sale of land, machinery and buildings (not recaptured capital cost allowance on depreciable property) by way of an agreement for sale or where a mortgage is set up can be averaged by using reserves. A reserve is really a method of deferring income tax where certain types of income which are owing to a taxpayer have not been received by him during the year. The amount that may be declared as a reserve depends on the date the contract was finalized.

(a) Transactions Prior to November 13, 1981

A vendor may declare a reserve that is in proportion to the amount of principal still outstanding. In effect, the vendor declares as taxable income only the portion of the total taxable capital gain which he receives each year. All agreements completed by November 12, 1981 are subject to the above rules even though payments may extend beyond November 12, 1981.

(b) Transactions after November 12, 1981

The amount of reserve that may be claimed depends on the terms of the contract, the type of property, and the relationship between the vendor and the purchaser. There are now three classes of reserves as follows:

Ten Year Reserve for Family Farms and Small Business Corporations

If the property is family farm property, shares of a family farm corporation, an interest in a family farm partnership or shares of a small business corporation and the taxpayer finances the sale of property to his child who is a resident of Canada, then up to a 10 year reserve (averaging period) may be used. In order to qualify for the 10 year reserve, all the conditions that are required to qualify for a rollover must exist as provided for in subsections 73(3), (4), and (5) of the Income Tax Act.

The maximum amount that may be claimed as a reserve is the lesser of the following two rules:

1. Rule of 1/10

$$\frac{10 - \text{No. of Years Since Sale}}{10} \times \text{Taxable Capital Gain}$$

or

2. Proceeds Rule

$$\frac{\text{Principal Unpaid}}{\text{Total Selling Price}} \times \text{Taxable Capital Gain}$$

Whatever reserve is claimed in one year must be brought into income the following year, however, a new reserve can be calculated for that year.

In order to obtain the greatest averaging advantage, agreements for sale should be structured so that no single payment (including the down payment) in the first 10 years exceeds 1/10 of the total selling price.

Five Year Reserve

Up to a five year reserve may be used where capital property is sold, where all or a part of the price is financed by the seller and the seller is not eligible for a 10 year reserve.

The reserve calculations are similar to the 10 year reserve except that the factor used would be 1/5 of the selling price rather than 1/10.

Three Year Reserve

A three year reserve may be used where property is sold and the proceeds must be reported as income (100% taxable) rather than as capital gain. This reserve would not be relevant to most farm businesses.

Further details on reserves is contained in Saskatchewan Agriculture and Food's publication "Income Tax Management for Farmers".

Tax Planning for Farm Estates

The $500,000 lifetime Capital Gains Exemption, Minimum Tax, Rollovers and Reserves makes for complexity in farm transfers. Effective tax planning should include careful calculation of the potential income tax liability for each alternative considered. Professional advice should be obtained for most situations.

Generally, when farm property is being transferred between family members either during life or after death, it is best to generate a capital gain on the transfer and then offset it with the Capital Gains Exemption in priority to the use of rollovers. In the case of inter vivos or testamentary transfers to a spouse, or testamentary transfers to a child, a transfer value can be elected at fair market value (rather than using adjusted cost base) which results in a capital gain. The $500,000 Capital Gains Exemption can then be applied to offset the capital gain. This effectively increases the property's adjusted cost base to the recipient. This reduces the tax liability for future dispositions. Once the $500,000 Capital Gains Exemption is fully utilized, rollovers should be used as a tax deferral technique.

On an inter vivos transfer of farm property to a child, a value can not be elected other than the adjusted cost base unless there is consideration (i.e. money or debts) received at a higher value. (This is in contrast to transfers at death to a spouse or child or during life to a spouse.) A method of achieving a transfer to a child at fair market value is to arrange a sale to the child at fair market value with a debt setup and repayable over a period of

years. Interest need not be charged, but it could be if desired.

The objective of a land transfer may be for the parents to give the land to the child while at the same time utilizing the $500,000 lifetime Capital Gains Exemption. A common procedure is for the land to be sold to the child at fair market value. The child issues a cheque to the parent for an amount equal to the fair market value to pay for the land. At the same time, the parent issues a cheque to the child for the same amount and calls it a gift. The cheques are passed through each party's bank account. This is called the cross cheque mechanism.

Warning: As of September 13, 1988, Revenue Canada has put into effect general anti-avoidance rules (GAAR). Transactions that are designed solely to achieve a tax benefit can be overturned by Revenue Canada. The cross cheque mechanism outlined above to increase the adjusted cost base of property on a family farm property transfer may be subject to GAAR. Persons utilizing this mechanism should do so with caution until Revenue Canada clarifies its position on such transactions.

Techniques to increase the adjusted cost base of property must consider other tax implications. Large capital gains may trigger a Minimum Tax liability on the one-quarter that is non-taxable. Reserves can be used to reduce the impact of Minimum Tax. Reserves brought into income as a result of the sale of property after 1984 qualify for the Capital Gains Exemption. Reserves are also used in the calculation of Minimum Tax. Therefore, the sale of property over a number of years may be an effective means of minimizing Minimum Tax but obtain the benefit of the Capital Gains Exemption. In the event that the Capital Gains Exemption is eliminated at some time in the future, however, it may result in regular income tax being paid on the reserves brought into income after that time. This could conceivably be a higher amount of tax than Minimum Tax would have been.

Another possibility is to schedule the sale of land over a number of years. For example, a farmer may sell one-quarter section of land every year. This may eliminate Minimum Tax each year while at the same time qualify for the Capital Gains Exemption.

Minimum Tax is not applicable in the year which a farmer elects to use a Five-Year Block Average. Farmers may wish to not elect to use a Five-Year Block Average in order that this option is available in the year in which Minimum Tax is significant. However, block averaging is being phased out. The year 1987 must be included in the last block average of an individual.

Minimum tax is not applicable in the year of death. Property could be transferred from an estate at fair market value which would result in capital gain that could be offset with the capital gain exemption.

Minimum tax would not apply to the estate. The two percent provincial flat tax applies to taxable capital gain. This must be considered as a cost of transferring property at fair market value.

Methods of Transfer by Sale

1. Agreements for Sale

An agreement for sale is often used for selling the farm to family members. Under such an agreement, the child takes possession of the farm but the title does not pass until payments are completed. This assures the child that he will obtain ownership of property providing he makes the required payments.

An agreement for sale has certain advantages when transferring a farm to a child. The farm business can remain intact. As well, the farming child has more security than with a will since a will can be changed any time before death. The balance owing at death on an agreement for sale can be passed by will along with other assets. An agreement for sale fits in well in a gifting program.

Agreements for sale can be useful to prevent a further increase in the value of an estate. For example, if land is sold to a son under an agreement for sale at fair market value (e.g. $700,000), any future increase in the land value will accrue to the son. The father has "frozen" his interest in that property at $700,000 less any principal payments received on the agreement.

Only the amount owing upon death becomes part of the estate.

An agreement for sale can be used to spread income from selling grain and livestock and other non-capital assets over a period of years. For example, a father may sell $5,000 worth of livestock to a son under an agreement for sale. With payments of $1,000 per year for five years, the father avoids being taxed on $5,000 in the year of sale but includes with his income, $1,000 for each of five years. Such an agreement of sale could include a fixed repayment schedule. It is not necessary to charge interest. However, if interest is charged the son could use the interest as an expense and the father must declare it as income.

Where an agreement for sale is used to average tax on capital gain, the agreement must not stipulate that the balance owing is payable on demand. Otherwise, a reserve may not be used and the capital gain must be added to the seller's income in the year the agreement is made. This differs from an agreement for sale of inventory, such as grain or livestock, where the tax on the sale can be averaged even if the agreement stipulates that the balance is payable on demand.

Debtors Gain

Agreements for sale or any other arrangement where debt is forgiven should be avoided. If the debt is settled without payment (written off, forgiven, gifted) the child will eventually be subject to income tax on the amount of debt that is written off. In addition, the interest portion of the payment that is forgiven will be considered income to the parent and an expense to the child even though money did not change hands. To avoid this problem the parent should make annual cash gifts (e.g. cheque and receipt) so that child can honour his commitments with cash under the agreement for sale.

Warning: As of September 13, 1988 Revenue Canada has put into effect the general anti-avoidance rules (GAAR). Transactions that are designed solely to achieve a tax benefit can be overturned by Revenue Canada. Gifting cash to a child in order to provide him with the funds to meet debt payment obligations with a parent may be subject to GAAR. Persons utilizing this technique should do so with caution until Revenue Canada clarifies its position on such transactions.

2. Outright Sale

An outright sale is another method of transferring farm property. The parent receives the total cash payment. The child would either make full payment from his savings or arrange for financing from a credit institution. An alternative is for the parent to sell the property to the child using a demand note or mortgage.

3. Option to Buy

An option to buy clause in a will, lease, partnership or other agreement gives a specified individual the first opportunity to purchase a property under certain conditions. For example, on the death of one member of a partner ship or father-son joint venture, the survivor is given the first opportunity to purchase the assets of the deceased. Similarly, a son could be given the right upon his father's death to purchase land he leased from his father.

An option to buy between a parent and child may be used to assure a child that he has the first right to acquire the property but allows the parent to control the property while living. The time period in which to exercise the option should be sufficient to arrange financing.

The price in an option may be a specific amount, based on a formula or be the fair market value at the time the option is exercised. However, if something other than a fixed amount is specified, there is a possibility of a dispute arising about establishing a value.

If the parents intend to transfer the property at their death to a child and use a capital gain rollover, an option to buy in a will can now be used. The terms of the option must be completed within 36 months of the death of the tax payer in order to use the rollover. Prior to 1986, a rollover was not permitted if a will contained an option to buy.

4. Right of First Refusal

In many respects a right of first refusal is similar to an option to buy. However, in a right of first refusal, the property owner grants a right to an individual to purchase property at the price and terms offered by another bona fide purchaser. For example, a land owner may list his property for sale and receive an offer from a purchaser that he would accept. The right of first refusal given to another party would allow the party to purchase the land at the price and terms in the offer. It gives a preferred person the right to buy a property without having to compete with other potential purchasers in the event that the owner wishes to sell.

A right of first refusal is more commonly used in a land lease, where the tenant is given a right of first refusal if the owner wishes to sell the property. It could also be used in a will.

5. Buy-Sell Agreement

A buy-sell agreement is similar to an option to buy, except the property must be purchased to fulfil the terms of the agreement. It provides that upon the death of one person in the business the survivor must purchase the deceased person's interest.

This type of agreement could help to keep the farm intact but could place a severe financial burden on the survivor. If financing is likely to be a serious problem, life insurance could be carried on each party's life to provide cash to buy the deceased party's interest.

6. Buy-Back or Lease-Back Option

A buy-back or lease-back option could be included in a transfer agreement whereby the parent could buy back or lease back the property from the child's estate if the child should die. It is advisable to use caution and seek legal advice before using such an option. It could contradict the child's will and it may impose hardship on the child's family.

Joint Ownership of Land

There are two common methods by which two or more individuals own land (co-ownership), joint tenancy and tenancy-in-common.

1. Joint Tenancy

Each party in a joint tenancy has an equal undivided interest in the land. When one party dies, that party's share automatically passes to the survivor(s). This means that an individual cannot direct in a will how joint tenant property will pass. The main advantage of joint property is that transfer and probate court costs are saved. The main disadvantage is that there is little control over the transfer of land. For example, a father and son may own land as joint tenants with the intent that when the father dies, the son will get title to the land; however, if the son dies first, the father would obtain title to the land and the son's wife would receive nothing.

Joint tenancy is commonly used by a husband and wife who wish to provide for a simple and inexpensive transfer of land in the event of the death of either of them. There is only a small fee charged when a surviving joint tenant registers jointly owned land following the death of the other joint tenant.

2. Tenancy-in-Common

Unlike joint tenants, tenants-in-common may hold unequal interests in the land. The main advantage of tenancy-in-common is that a co-owner has the right to sell, gift or will his interest to anyone. When a tenant-in-common dies, his interest in the land passes under his will or according to the provisions of the Intestate Succession Act if there is no will. In this way the son can ensure by means of a will that his wife receives part of the property. Tenancy-in-common could be a disadvantage if a tenant's interest is transferred to another individual and the new tenants-in-common are unable to agree as to the use of the land.

It is relatively simple and inexpensive to transfer individually-owned land (called sole proprietorship) into joint tenancy or tenancy-in-common. To accomplish such a transfer, the name of the sole

owner on the land title must be changed to the names of the co-owners. When this change is registered at the Land Titles Office where the title is stored, a processing and assurance is charged. This fee is $15.00 on the first $1,000 value of property plus $1.50 for each additional $1,000.00 of value. Consideration should be given to the tax consequences of a transfer of farm land from sole proprietorship into joint tenancy or tenancy-in-common. If the transfer is other than to a spouse or to a child a taxable capital gain could arise.

Leasing

Leasing of property can be an integral part of estate planning. It can apply to the whole farm or to parts of the farm such as land, buildings, livestock, or machinery. Leasing involves giving up control of certain resources in return for a cash rent or a share of the income.

There are several advantages to a leasing arrangement. For the tenant it is a method for obtaining outside capital. Investment is shared between two individuals with the landlord supplying land, buildings, and perhaps some of the operating expenses and the tenant supplying labour, machinery, and usually the major portion of the operating expenses. Leasing is a way to become established in farming without a large initial capital outlay and enables an operation to grow faster.

A father-son arrangement might include a lease agreement whereby the son rents land from the father. It enables the father to reduce his work load and retire gradually while still receiving income from the farm. An option to buy clause could be included in the agreement giving the son the first right to purchase the property at some time in the future.

Farm Business Arrangements

A farm business arrangement is an agreement between two or more people to combine their resources in a farm operation. This may involve the pooling or sharing of land, machinery, livestock, labour, expenses and income. Common types of farm business arrangements are Labour Incentive Arrangements, Machinery Sharing Arrangements, Equipment Leasing, Land Leasing, Livestock Sharing Arrangements, Joint Ventures, Partnerships and Corporations.

Farm business arrangements are often used in estate planning to assist in the gradual transfer of ownership and control of a family farm from parents to children.

Full details of these arrangements are contained in Saskatchewan Agriculture and Food's publication "Farm Business Arrangements".

Transfer by Gift

Gifting is a transfer method used during one's lifetime. This is in contrast to bequests which occur at death. A gifting program should be considered when an individual's retirement income needs are adequately provided for. Gifts can be made to children over a number of years. However, the resulting income tax implications must be considered.

When gifts are made, written proof in the form of a signed and witnessed endorsement of the agreement, cancelled cheques and receipts and other pertinent records should be maintained in order to avoid such gifts being included in the estate of the donor.

Forgiveness of debt on loans, demand notes and agreements for sale should be avoided. This was discussed in the section, "Agreements for Sale".

1. Income Tax Implications of Gifting

For income tax purposes all gifts, except farm land and depreciable farming assets to children and all capital assets to a spouse, are considered to have taken place at fair market value. This could result in a capital gain (may be eligible for Capital Gains Exemption) and recaptured capital cost allowance (Part XI - declining balance assets) for capital assets and taxable income for such assets as grain, livestock and other farm supplies. There is no income tax when cash is given, since the income tax has already been paid on such sums.

As noted in the section "Tax Implications of Transfer by Sale", gifts of farm land and depreciable property to children or a spouse may be transferred while deferring capital gains and recaptured capital cost allowance, provided that certain conditions are met.

The attribution rule provides that if a gift is made to a child under 18, the giver is responsible for

capital gains, the recaptured capital cost allowance, and income associated with the property until the child becomes 18. However, if the child uses the gifted property in a business, the business income is taxable in the hands of the child.

The fair market value of grain, hay, livestock or any other inventory item which are gifted must be included in the giver's taxable income. The recipient may claim the same amount as an expense on his income tax return.

2. Gift Taxes

Other than income tax, there are no gift taxes to pay when making a gift to anyone.

Trusts

A trust is an arrangement whereby assets are administered by a trustee for another's benefit. Trusts can be established during a person's life (an "inter vivos" trust) or by a will at death (a "testamentary" trust). They are usually terminated after a specified period of time or when a specified occurrence such as the death of the beneficiary takes place.

Trusts can be used for several purposes. A trust may be used to provide a maintenance fund for a surviving spouse or dependant child. Another use is to hold an inheritance for a minor child until that child reaches a specified age. Where a farmer wishes to transfer his farm to a child but also protect his wife's income security, he could place farm assets in a trust. The wife can be given rights such as the right to live there and to operate it or to receive a rental income from it but after she dies the farm becomes the property of one or more children.

A trust avoids administering two estates and perhaps double taxation and other costs. It gives the testator a means of controlling his estate after his spouse's death and ensures that no children will be left out of the estate should the spouse remarry.

Trusts have certain disadvantages. The income from the property left in the trust may not be sufficient to maintain the spouse over a long period of time. Certain assets such as cattle, grain, feed, and machinery do not lend themselves to trust provisions. Unless care is taken in drafting the terms of the trust, it could render undue hardship on the surviving spouse. It could prevent him or her from using cash, grain, and cattle until actual income is received. This can be avoided by giving the trustee the power to sell assets of the trust if the need arises.

The income tax treatment of a trust depends on how a trust is established and who the beneficiaries are.

Spouse Trusts

A qualifying spouse trust is an irrevocable trust set up by a taxpayer in such a way that no one other than the spouse has the right to the income or capital of the trust. In a qualifying spouse trust, the taxpayer may rollover any capital asset to the trust, thereby deferring the taxation of capital gain. A rollover to a trust in not permitted for a non-qualifying spouse trust.

Certain farm property (see section on Rollovers to Children) may be rolled over to children through an intervening spouse trust. The farm property can be rolled into the spouse trust then after the death of the spouse to the children. The requirement is that the farm property must be used in a farm business prior to the transfer to and during the time the property is in the trust. Note that it is not necessary for the taxpayer, his spouse or child to use the property in a farming business. A spousal trust can be a method of obtaining a rollover to a child of farm property that may not otherwise qualify.

Other Trusts

In all other trusts, except a spouse trust and a trust for a child where certain farm property is transferred to the trust, assets may not be rolled into a trust on a tax deferred basis. Assets are deemed to be transferred at fair market value which may result in capital gain. However, the $500,000 Capital Gains Exemption may apply.

When a trust is terminated or where capital assets are relinquished by a trust, the beneficiary is

considered to have received the asset at its cost to the trust. Thus, assets are rolled out of the trust without incurring a capital gain. This feature is a potential advantage of using trusts in that the value of assets can effectively be "frozen" for a period of time. An asset with a high expected capital gain may be put in trust for a beneficiary. The capital gain would be calculated at the time the trust is established. When the asset is transferred to the beneficiary any capital gain accruing after the establishment of the trust is rolled over to the beneficiary.

A major disadvantage of trusts other than for a qualifying spouse trust is that every 21 years a trust is deemed to dispose of all non-depreciable capital assets at fair market value and then to immediately reacquire those assets. Thus, a possible capital gain is incurred at 21 year intervals during the existence of the trust. To avoid this it is advised that trusts be set up for durations of less than 21 years or that the trust be comprised largely of non-growth assets.

A trust may retain and declare its income for tax purposes or the income may be declared by certain beneficiaries as specified in the Income Tax Act. The income of the trust must be declared by either the trust or the beneficiary in the year received. For the income to be declared by the beneficiary, the beneficiary must have the right to receive that income.

Life Estate

A life estate gives an individual the right to use and occupy land for either his lifetime or the lifetime of another person. It is commonly used when a husband grants a life estate in land to his wife, with the children receiving the land after the wife dies.

A life estate creates two separate interests in land (note that in a trust, the trust owns the property).

Farm land can be rolled over to a child by means of a life estate to the taxpayer's wife. The requirement is that the farm land must be used in a farming business by either the taxpayer, his spouse or a child immediately prior to the establishment of the life estate.

Transfer of Land to a Child Subject to a Life Interest

While living, a parent may transfer land to a child on a rollover but retain a life interest in the land. This can be referred to as an inter vivos life estate. The land transfer can take place at a time when the parents qualify for a rollover. A change in the operation of the farm (e.g. leasing to a neighbour) may mean that they would not qualify for a rollover at a later date. The child becomes the owner of property but the parents are entitled to the income from it as long as they live. The income could be in the form of a rental paid by the child to the parents.

There are several implications to this arrangement:

- The child is assured of ownership of the land;
- The parents are assured of income (rent) from the land while they live;
- The income or rent is taxable income to the parents.

Transfer by Bequest

A transfer of assets by will is known as a bequest. A person who dies without a will is said to have died "intestate". When this occurs, the Intestate Succession Act (Saskatchewan) governs the administration and distribution of the estate.

If an estate is governed by the Intestate Succession Act several problems can arise. The estate may not be distributed fairly, particularly where a son has worked on the home farm for a period of years while other children have contributed very little. Without a will, guardianship problems are greater if minor children survive. Also, the courts may require costly bonding of an administrator appointed to act as the personal representative of the deceased to settle his estate.

Wills

A will is one of the most important legal documents you will ever sign. It allows you to direct how your property will be dealt with after you die. Proper estate planning and legal advice is essential in drawing your will. Tax considerations,

alternatives in drawing your will (for example, life estates, trust or outright gifts) and legal formalities makes it well worth the usual legal bill to have a will properly drawn.

Who Can Have a Will

In Saskatchewan, any mentally competent person over 18 years of age can draw up a will. If someone with questionable mental capacity wishes to draw up a will, it is a good idea to have that person certified as competent to do so by a qualified physician.

In Saskatchewan, a person who is or has been married or is a member of the Armed Forces can make a valid will even if he or she is under 18.

Writing

A will must be in writing. It can be written on any substance. A will scratched on a tractor fender by a farmer who lay dying was held to be a proper will in Saskatchewan.

Signature

A will must be signed by the person making it (referred to as the "testator"). The signature must be placed at the bottom of the will, and must be placed on the will after it is completely drawn up.

If the will is not entirely in the testator's handwriting, it must be signed in the presence of two witnesses who must also sign the will.

If the will is entirely in the testator's handwriting (called a "holograph will") and there are no words typewritten on the page or written by someone else, the testator's signature does not have to be witnessed. However, be very careful about this. A printed will form obtained from a stationer is not a valid will if signed only by the testator. This is the same as having no will at all. It is only where all the writing in the will is in the testator's handwriting that a testator does not need his signature witnessed.

Witnesses

Anyone, including someone under the age of 18, can witness a testator's signature to a will provided they would be capable of giving evidence that they saw the testator sign his will. It is a good idea to choose relatively young witnesses who are easy to locate. Blind persons or those of unsound mind would not be competent witnesses.

A bequest in a will to a witness or his/her spouse is invalid. Therefore, do not have a beneficiary or a spouse of a beneficiary witness your will. A will witnessed by a beneficiary or the spouse of a beneficiary does not make the will itself invalid, just the portion bequeathed to the witness. The beneficiary or his/her spouse would be unable to take the bequest.

Changing a Will

Never cross out a portion of a will or make any changes to it as this may make the whole will invalid. A will can only be changed by a "codicil" (clause which is added on to the end of the will), or by having an entirely new will drawn up. A codicil must be witnessed by two witnesses unless the will is a holograph will in which case the testator's signature alone is sufficient. Often codicils which strike out beneficiaries will cause hard feelings on the part of the beneficiary when he learns that the testator changed his mind. It is likely better to draw a new will in this type of situation.

Revocation by Marriage

A will is automatically revoked (made invalid) when you marry unless you specify that the will is being made in contemplation of marriage to a particular person whom you later marry.

Effect of Divorce

Upon a decree absolute of divorce, a recent amendment to The Wills Act provides that any provision in a will that benefits a former spouse, or that names the former spouse as trustee or executor is automatically revoked. The will is dealt with as though the former spouse had predeceased

the testator unless the will specifically states otherwise.

Other Forms of Revocation

A will is also made invalid if you draft a later will or if you burn, tear or destroy a will with the intention of revoking it.

Executors

An executor is the person appointed by the testator to take title of all the deceased's assets, pay all of the estate's debts, have the will probated and distribute the assets to the beneficiaries listed in the will. The choice of an executor is a very important decision. You should choose someone who knows you and is interested in you and your family. Choose someone who is young enough to outlive you. It is a good idea to choose someone who lives in the province and has an understanding of farming and business. The most logical choice is one of the beneficiaries or a relative.

You can appoint two executors, but this will often complicate matters as both executors must then sign all documents and cheques and approve each other's decision. It is a good idea to appoint an alternate executor. In situations where an executor is dead, incapable or refuses to act the courts will appoint an administrator.

The basic duties of either the executor or administrator in handling an estate are:

a. To make sure that funeral arrangements are looked after and paid for out of the estate (an executor can overrule a spouse or child regarding funeral arrangements);

b. To find the most recent will and read it;

c. To appoint a lawyer;

d. To take an inventory of the deceased's assets;

e. To keep the farm operation running smoothly. This included making sure all vehicles are relicensed within 30 days of the death, all buildings are covered by adequate fire insurance and all liquid assets of the estate are invested in interest-bearing accounts;

f. To apply to have the will probated by the courts. "Probate" means the court approves the will and the executor;

g. To pay all legal debts, taxes and expenses of the testator;

h. To have all tax returns for the deceased and the estate prepared and filed.

i. To distribute the assets in the estate to the beneficiaries named in the will or under the Intestate Succession Act;

j. To account to the beneficiaries regarding how the assets were distributed;

k. To account to the courts regarding how the assets were distributed unless all beneficiaries sign "Releases" saying this does not have to be done.

Clauses in a Will

Opening

The will should be dated and indicate the full name and address of the testator.

Revocation Clause

There should be a clause stating all former wills and codicils are cancelled.

Executor

An executor, co-executors or alternative executors should be named.

Payment of Debts

You should specify what assets you want the executor to use in paying the debts of the estate. This could be cash in a chequing account, grain on hand, etc.

Distribution of Estate

If you want certain beneficiaries to receive certain assets, you must indicate this. It is important to indicate how you want the assets you do not specifically mention to be distributed, as well as who is to get the assets in the event that all the beneficiaries die before you do.

Residuary Clause

A residuary clause should be included to indicate how any remaining property not specifically mentioned in the will (called "residue") is to be distributed. Unless specified otherwise, all debts will be paid from the residue of the estate. If this is insufficient, property included under general gifts followed by specific gifts will be used to pay outstanding debts of the deceased.

Guardians

Guardians can be appointed to look after minor children. They cannot supervise that portion of the estate which is left to the minor children unless the will directs it. If the will does not direct it, the Official Guardian oversees the investment and disbursements. If the will directs the guardian to do this, the guardian must obtain a security bond approved by the Court of Queen's Bench unless the guardian is also appointed a Trustee by the will. In selecting a guardian, choose someone who will raise your children in a manner you consider proper. You should choose someone who has views on religion and education which are similar to yours. Make certain the guardian is young enough to live past your children's eighteenth birthday. Consider whether the guardian is capable of handling money properly.

Common Disaster

It is wise to indicate what will happen if you and your main beneficiary die at the same time in an accident. The law presumes the oldest dies first and this means that the estate will pass from the oldest to the youngest and then to the youngest's beneficiaries. The estate will therefore be probated twice (which is expensive and time-consuming) and will often end up going to people you never intended to receive it.

Limited Survival

It is also wise to state that the main beneficiary should outlive you by a specified number of days (usually 15 to 60 days) before becoming entitled to your estate. Then if you and the beneficiary are in a common accident and she/he is injured, she/he must outlive you by more than a few hours before becoming entitled to the estate.

Life Estate or Trust Wills

If an estate is relatively large a trust or life estate will may be considered whereby a testator gives a specified person a life interest in certain property, and then after that person dies, the property is transferred directly to another party. Trusts and life estates were described in more detail in a previous section.

Beneficiary Borrowing Clause

If an estate is held in trust, a clause can be added which gives the trustee the power to advance money to certain beneficiaries for purposes such as education of a child reaching a specified age. The sums advanced would be charged against the child's future share of the estate.

Education Clause

When there are children of varying ages and education levels, giving an equal share to each child may not be fair. Some children may have been educated at the testator's expense but not others. To make the distribution fair, the testator could hold the estate in trust until the youngest child reaches a specified age. If necessary, both income and capital of the estate could be used to educate such children. The balance remaining would be divided among the children according to the testator's wishes. The testator should be cautious regarding the use of such a clause. Holding funds in trust may mean that older children receive less from the estate than younger children since younger children have access to the income of the trust during their education. As well, the testator should seek legal advice to ensure that his will stipulates the terms of the trust, especially regarding who has access to the income of the trust

and when. These are important factors in determining how income of the trust will be taxed.

Option to Purchase Clause

See the section on "Methods of Transfer by Sale".

Deceased Beneficiary Clause

In some cases a child, brother or sister of the testator who is named in the testator's will may die before the testator. The bequest to such a person does not lapse if that person has children or a spouse. Rather it is distributed as if the person had died without a will immediately after the testator's death. In such a case, the bequest is distributed to the spouse and/or children under rules similar to the Intestate Succession Act but without the $40,000 preferential share due to the wife under the Intestate Succession Act. A clause may be inserted in the will to provide that the bequest goes to an alternate beneficiary or to the children only and not the spouse.

Special Instructions

A will may stipulate funeral wishes and intentions to donate body organs. However, such intentions should also be known by family members and executors because the will is not always read before the funeral.

Witnesses

You need two witnesses to a formal will. The original signed will is the only true will. It should be kept in a safe place which is easy to find such as a safety deposit box. It should be reviewed and revised as circumstances change. Since a marriage automatically revokes all previous wills not made in contemplation of that particular marriage, it is necessary to draft a new will upon marriage. Changes in the family (births, deaths, marriages, completion of education, etc.) tax laws, and financial status of the testator require that the will be reviewed and possibly revised.

Matrimonial Property Act

This Act assumes that marriage is a partnership and that all matrimonial property should be shared equally unless it would be unfair to do so. The Act provides that a spouse can commence an application for the division of matrimonial property up to six months after the grant of Letters Probate or Letters of Administration concerning the estate of his spouse. This means that the amount of the distributable property in an estate can be reduced by a court order under the Matrimonial Property Act.

You should therefore consider how this Act can affect your will and you would be wise to consult your lawyer. As an example of what can happen under this Act, consider the following situation. Farmer Jones draws his will leaving half of his estate (property in his name) to his wife and half to his son, Harold. After his death, his wife makes an application under the Matrimonial Property Act and the court decides that she is entitled to half of the property registered in her husband's name. His estate is then reduced by half. Under the terms of the will, his wife would still be entitled to half of what remains in his estate, so that she would end up with three-quarters of what Farmer Jones considered to be "his estate" at the time he sat down to write his will. Son Harold would receive one-quarter.

When There Is No Will

If someone dies leaving no will, the Intestate Succession Act applies. If the net value (after all creditors are paid) of the estate does not exceed $100,000.00 the spouse gets everything. If the net value exceeds $100,000.00 and there is one child, the spouse gets $100,000.00, plus interest from the date of death and one-half of everything over $100,000.00. The child gets the other half. If there is more than one child, the spouse gets $40,000.00, plus interest from the date of death, and one-third of the balance. The children would receive the remaining two-thirds in equal shares.

If there is no widow, the children would share the estate equally. If any of the children predeceased their intestate parent, their spouse and/or children would get their share. If no widow or children survive the deceased, his parents are entitled to this estate.

If no parents are living, the deceased's brothers and sisters take (receive) in equal shares. If a brother or sister has died, the person's spouse and/or children would share that brother's or sister's portion equally.

Other next of kin are considered according to their blood relationship to the deceased.

If no next of kin survive the deceased, the estate will go to the government. The Lieutenant-Governor-in-Council can make a grant to anybody he thinks has a valid moral or legal claim to the estate.

Will Planning Strategies for Family Farms

The contents of your will should be based on how you would want your estate handled and distributed if you were to die tomorrow. Drawing a will which anticipates your death 10 or 20 years in the future may be inappropriate it you died earlier. Plan to review your will at least every three years or more frequently if tax changes occur or your family or financial circumstances change.

Providing For a Spouse

The distribution of your estate by a will should contemplate two sets of circumstances. That is, one situation where your spouse survives you and the other situation where your spouse predeceases you. In order to provide sufficient income to maintain a spouse, a farmer might consider leaving a large share or perhaps the entire estate to the surviving spouse. A small share or perhaps none of the estate is left to his children. The spouse's will would then determine the final distribution to the children.

Alternatively, a spouse trust could be established. This would give the spouse the right to receive the income from assets placed in the trust, but not ownership rights. After the death of the spouse, the assets of the trust would be distributed to the children.

In the event that the spouse predeceases the farmer, then the entire estate is divided between the farmer's children or perhaps other beneficiaries.

Both a husband and wife should have wills, and their individual wills should complement each other. Good two-way communication is important so that each other's long term estate plans can be provided for in the event of either the husband's or wife's early death.

Providing for Children

Dividing a farm estate between the children is relatively easy if there are no children currently farming or they have no intention of farming in the future. The farmer may simply provide for an equal division between all children or provide a greater share to some children because of their special circumstances (age, level or prosperity, education, special health needs or problems, etc.). The division of the estate should take into account the value of gifts made to the children during the farmer's life.

When a child is involved in the family farm, there can be a great deal of difficulty in deciding how to distribute the estate. Since most of the farmer's assets are tied up in farm property, the farming child could receive a very large share of the estate if he was left all the farm assets. The non-farming children may be left with very little. If the farmer leaves an equal share to all his children, the farm could be broken up into small non-viable units. If the farming child attempted to buy the non-farming children's interests, it may place him in a position of being unable to generate sufficient cash flow to pay them out.

A farmer may recognize the difficulty in becoming established in farming and decide to leave a somewhat larger share to the farming child. However, if often means that some farming assets must be distributed to non-farming children to provide them with a reasonable share of the estate.

Planning a division of a farm estate between children can be made easier by summarizing your financial situation on a statement (see the following example).

	Fair Market Market	Tax Free Amount
Assets:		
Land (6 Qtrs x $100,000)	$600,000	$120,000
Buildings (including house)	100,000	60,000
Machinery and Equipment	100,000	50,000
Grain and Supplies*	80,000*	Nil
RRSPs*	25,000*	Nil
Bonds and Term Deposits	100,000	100,000
Total Assets	$1,005,000	$330,000
Liabilities	Nil	
Net Worth	$1,005,000	
Income Tax at Death	45,000	
Value of Estate	$960,000	

* These amounts are taxable on the death of the taxpayer and these figures are used to estimate the income tax payable on death.

Based on this example, the following summarizes some of the alternatives a farmer may consider in distributing an estate among his children at the time of his death. It is assumed that the farmer's wife has predeceased him and that the farmer has three children, one who is farming and two who are non-farmers.

Alternatives

1. Equal division among the three children (share and share alike). Each child would be entitled to a one-third share of $960,000 or $320,000. Each child would be entitled to a share of each and every asset. If the farming child wished to continue to farm the land, he would have to negotiate terms with the non-farming children. It may be possible for him to "trade" his interest in the grain, supplies, RRSPs, bonds and term deposits for the non-farming childrens' interest in machinery and equipment. The farming child would own 2 quarters of land in effect, and may be able to lease the other 4 quarters owned by the other children. The farming child may negotiate to purchase the farming assets of the non-farming children. However, unless he is in a strong financial position, it may not be possible to generate sufficient cash flow to pay for the assets or handle the associated debt. If an agreement can not be reached, it may be necessary to sell some or all of the assets in order to settle the estate.

2. Bequeath all the farm assets to the farming child and the non-farm assets to the nonfarming children. The farming child would receive an inheritance of $800,000 (83% of the estate). The non-farming children each would receive one-half of $160,000 or $80,000 (8.3% of the estate). This may not be a fair distribution, depending on the family situation and their attitudes.

3. The farming child is bequeathed two quarters of land, the buildings and the machinery and equipment for a total value of $400,000 (41.7% of the estate). The non-farming children share equally in the other four quarters of land and the non-farm assets for a total value of $560,000.00. Each non-farming child would receive $280,000 or 29.2% of the value of the estate.

The farmer could ensure that the farming child has a right or the opportunity to farm the land bequeathed to the non-farming children by means of the following:

(a) Prior to his death, the farmer could enter into a long term lease with his farming child on the land to be bequeathed to the non-farming children. The terms of a lease are binding on the heirs and executors of a deceased person, therefore the non-farming children must honour the lease for the remainder of the term. This provides security for the farming child for a number of years. It gives him some time to build up equity to buy the land from the non-farming children at the end of the lease.

(b) As a condition of the transfer of the land from his estate to the non-farming children, the farmer could require the non-farming children to lease the land to the farming child for a term as long as the non-farming children maintain ownership of the land.

(c) As a condition of the transfer of the land from his estate to the non-farming children, the farmer could require the non-farming children to grant an option to buy or a right of first refusal to the farming child.

These conditions could be enforced by requiring the executor of the estate to have the non-farming children enter into a formal option to buy, right of

first refusal or lease as the case may be with the farming child before the land was transferred to them from the estate.

4. The farming child is given an option to buy all the farm assets. (Note that after 1985, such property qualifies for a rollover although it may be preferable to elect a property transfer at fair market value to generate a capital gain. The capital gain may be offset with the lifetime Capital Gains Exemption). The non-farming children receive all the non-farming assets plus a share of the amount payable under the option. The farmer decides that he would like the farming child to receive 40% of $960,000 or $384,000. However, the farmer wishes the farming child to receive all the farm assets with a total value of $800,000. In order to achieve a share ratio of 40:30:30, the will must stipulate that the farming child pay $800,000 - $384,000 = $416,000 to the non-farming children under the option to purchase. The non-farming children share equally in the $416,000 plus the non-farm assets of $160,000 (total $566,000). The farmer should indicate how he wants the estate divided if the farming child does not exercise the option.

5. The farming child is willed all the farm assets and the non-farming children receive all the non-farming assets. In addition, during his life, the farmer could purchase a large amount of life insurance and make the non-farming children the beneficiaries as a means of increasing their inheritance. This alternative may not be as desirable since life insurance premiums for older people are very high and will significantly reduce the disposable income of the farmer while he lives. In addition, life insurance premiums are not deductible as an income tax expense.

6. During his lifetime, the farmer could have transferred one or two quarters of land to the farming child subject to a life estate whereby the child paid a rental to his parents as long as either parent lived. In determining, the final distribution of his estate through the will, the farmer should consider the value of such farm land transferred during his life to the farming child as part of that child's final share of the estate.

Be sure that the capital gains exemption or rollover provisions are fully considered when conditions (e.g. option to purchase, right of first refusal, leasing requirements, etc.) are attached to the transfer of farm land from an estate. The will must be worded carefully to ensure that the property vests indefeasibly in the child within 36 months of the death of the taxpayer. Review the will frequently to make sure that the farming child has the financial ability to handle the terms of an option to purchase and that the will is appropriate for changing family and financial circumstances.

Estate Settlement After Death

Administration

After an individual's death, the estate must be gathered and distributed to the heirs under the terms of the will or if there is no will under the Intestate Succession Act. These duties are carried out by an executor (named in will) or the administrator (appointed by the court where there is no executor).

The executor must file a "Petition for Probate" with the clerk of the Surrogate Court to obtain the right to proceed. Probate is the procedure whereby the court confirms the validity of a will and the appointment of the executor(s). Where there is no will an administrator would file a "Petition for Letters of Administration". If there is a will but the appointed executor is unwilling or unable to act, the administrator would file a "Petition for Letters of Administration with Will Annexed" which would include a "Renunciation of Executorship" by an appointed executor who refuses to become an executor. The administrator must be bonded unless this requirement is waived by the creditors and beneficiaries. A trust company which acts as an administrator is not required to a post a bond. Normally, an executor does not have to be bonded.

The first duty to be carried out by the executor or administrator is to locate one of the two witnesses of the will for completion of the "Affidavit of Execution". This verifies that they witnessed the

signing of the will. It is, therefore, important to select witnesses who are relatively young and easily located. If the witnesses are dead or cannot be located the court usually accepts a properly completed will.

When making application for Letters Probate or Letters of Administration the executor or administrator must fill out an Inventory and Valuation form which lists all property of the estate. This is followed by payment of all legal fees and other costs of settling the estate. The deceased's final income tax return must be filed with Revenue Canada. Delays in settling estates are most commonly related to completing the Inventory and Valuation form and in obtaining the Clearance Certificate from Revenue Canada and a Clearance Certificate should be obtained. Such delays are minimized if the estate planner keeps adequate records of his assets, liabilities, income and expenses.

Another duty of the executor or administrator would be to give notice to all creditors. This notice would be advertised in a newspaper circulating in the area where the deceased resided giving creditors a specified time period in which to state their claim. All properly proven debts would then be paid out by the Executor or Administrator. The funeral expense and legal fees must also be paid by the Executor or Administrator.

When all the duties have been fulfilled and the necessary forms filed everything must be submitted to the Surrogate Court for approval and grant of release unless all parties give release. Only after this time can the executor distribute the balance of the estate in accordance with the terms of the will, or where there is no will, under the provisions of the Intestate Succession Act.

Income Tax at Death

The Income Tax Act permits a deceased taxpayer to pass all types of property to his spouse on a rollover such that the estate does not realize a capital gain or recaptured capital cost allowance. In addition, farm land and depreciable assets used in the business of farming by the taxpayer, his spouse or a child may qualify for a rollover when transferred to a child. For other situations, the deceased is considered to have disposed of all non-depreciable property (e.g. land, inventory) at fair market value. However, these amounts are eligible for the Capital Gains Exemption. Further, this deduction should normally be used in priority to rollovers.

Depreciable assets on the straight line method of capital cost allowance are deemed to be transferred at the fair market value of the asset. Depreciable assets on the declining balance method are deemed to be transferred at a value halfway between fair market value and the undepreciated capital cost except in the case of those willed to a spouse or child.

The deceased's final tax return must include all regular income for the year, capital gains less capital losses, recaptured capital cost allowance, and the value of "rights and things" at the time of death. Rights and things for farmers include inventories such as grain, livestock, feed, etc. and unclipped bond coupons.

The following elections (options) are available for reporting the value of rights and things:

1. The value of the rights and things may be added to the other income in the year of death; or

2. Either one or a combination of the following:

(a) A separate return for the value of rights and things may be filed in which case deductions and exemptions are allowed as if the deceased had been another person.

(b) The rights and things may be transferred to the beneficiaries who in turn include the value of rights and things in their income when sold.

The estate may qualify for a five year block average. However, it cannot qualify to use a reserve.

Estate Taxes

Other than income taxes, there are no estate taxes or succession duties involved in settling an estate in Saskatchewan.

Special Considerations in Estate Planning

The Dependant's Relief Act

Situations can arise either under the terms of a will or under the Intestate Succession Act which result in the deceased person's family not being adequately provided for. In such cases, the courts have the power under the Dependant's Relief Act to see that the deceased's estate adequately provides for maintenance and support for the dependants.

The Act specifically spells out that a dependant is one of the following:

(a) Spouse of the deceased.

(b) Children of the deceased under eighteen years of age at the time of the deceased's death including illegitimate children and children not yet born.

(c) Children over eighteen years of age at the time of the deceased's death but unable by reason of mental or physical disability to earn a livelihood or that by reason of need or other circumstances ought to receive a greater share of the estate.

The courts have wide discretion to award a satisfactory amount to be paid out of the estate to any dependant. This amount may be payable annually, as a lump sum or as an assignment of real property.

For a husband to succeed in an application under the Dependant's Relief Act, he must prove that he was a dependant of his wife at the time of her death.

It is advisable to obtain legal counsel if a claim is contemplated under this act.

The Homestead Act (1989)

A non-owning spouse in Saskatchewan has the right to turn down any transfer, lease, mortgage or any other transaction which conveys an interest in the owning spouse's homestead to a third party. If such a transaction is to be registered in the Land Titles Office, the Saskatchewan Homesteads Act states that the non-owning spouse must freely consent to the transaction when questioned separate from the owning spouse by someone such as a lawyer or a notary public who has no prior involvement in the transaction.

The term "homestead" refers to one's home, not to a parcel of land sold by the government to a settler or "homesteader". Generally, in The Homestead Act, "homestead" means any house and lot or quarter section of land owned by one spouse and where both spouses resided since marriage.

Homestead rights do not give the right of ownership of a homestead to the non-owning spouse. Therefore, the non-owning spouse cannot sell, gift, or bequeath the property.

Homestead rights can be taken away from the non-owning spouse in situations of divorce, separation, inability of the non-owning spouse to be responsible for his/her decisions and other just causes.

Farm Security Act (Farm Ownership)

The Farm Security Act (Farm Ownership) is a provincial act, which limits the amount of Saskatchewan farm land which residents outside Saskatchewan and Canada and non-agricultural corporations may own. Subject to certain exemptions, residents of other Canadian provinces are limited to acquiring or owning aggregate land holdings of 320 acres. Non-Canadian residents are limited to the acquisition or ownership of 10 acres. Non-agricultural corporations in which a majority of the shares are owned by Saskatchewan residents are limited to owning 320 acres while other non-agricultural corporations are limited to owning 10 acres.

"Aggregate land holdings" refers to the holdings of an individual, his spouse and his dependent children. Non residents who acquire farm land by will, gift or purchase and who are direct descendants (children, grandchildren, etc.) of the individual from whom they obtain the land, are

exempt from the provisions of the Act, provided that the deceased had farmed in Saskatchewan for at least five years.

An "agricultural corporation" is defined as one which is primarily engaged in the business of farming and has the majority of its shareholders as resident farmers. The Farm Ownership Board may exempt a non-agricultural corporation from this restriction.

It is advisable that individuals who are affected by the Act contact the Farm Ownership Board (see address in the section, "Where to Obtain Additional Information and Services").

Functions of the Public Trustee

The Public Trustee is involved wherever an infant child has an inheritance from an estate. The Public Trustee assumes the role of trustee of the infant's inheritance and may place it in a common trust. An interest rate is paid on the funds in the trust and a small administration fee is deducted. The Public Trustee may allow funds to be dispersed from the trust for the maintenance or education of the child. In the case of a privately administered trust fund set up for the child, the Public Trustee has the power to audit the trust to protect the child's interest.

Under the provisions of the Mentally Disordered Persons Act, a person can be declared incompetent to handle his estate. If this is done, the Public Trustee may in effect become the trustee of that estate. The Trustee has the power to act in the best interests of the estate. This function ceases when the incompetent person dies; when he becomes competent to handle his affairs; or when a private individual or trust company has been appointed by the court to assume trusteeship over the estate.

Functions of the Official Administrator

In certain instances, if an individual is unwilling to accept the responsibility of administering the estate of a deceased person, a designated trust company may be empowered to take over that responsibility. Certain trust companies are designated to act as Official Administrators in each judicial district in Saskatchewan. If no one has begun administration of an estate within the month following the death of the deceased, the Official Administrator is empowered to apply to the Surrogate Court for Letters of Administration. Often the Official Administrator is alerted to the existence of an unsettled estate by some interested party such as a friend, relative or creditor of the deceased or the hospital at which the deceased died. The fees of the Official Administrator are set by the Attorney General's Department and the estate settlement is subject to audit by the Provincial Auditor.

Power of Attorney

This is the authority given by one person to another to act on his behalf. It may be limited to specific dealings (e.g. banking) or may be general. It can be revoked by the person who gave it and is automatically terminated upon his death. For the power of attorney to be valid for land dealings, it must be in the form set out under the Land Titles Act. This form could be used as a basis for a general power of attorney. When considering giving power of attorney to someone, take into account their competency and trustworthiness.

Estate Checklist

*NAME*_____*DATE*_____

*ADDRESS*_____

*PHONE NO.*_____*SOCIAL INSURANCE NO.*_____

YOUR WILL

*Location of Original Copy of Your Will*_____

*Date of Will*_____

*Name and Address of Person Who Prepared Will*_____

*Name and Address of Executors or Trustees*_____

*Name and Address of Guardians for Children*_____

*Name and Address of First Witness to Will*_____

*Name and Address of Second Witness to Will*_____

*Special Instructions About Will*_____

FUNERAL ARRANGEMENTS

*Instructions for Funeral*_____

*Cemetery Plot Location*_____

*Title to Cemetery Plot*_____

PERSONAL INFORMATION

Date of My Birth _____
My Birth Certificate is in _____
My Spouse's Maiden Name is _____
Date of My Spouse's Birth _____
My Spouse's Birth Certificate is in _____
Date of Marriage _____
Location of Marriage Certificate _____
Location of Divorce or Separation Papers _____
Location of Baptismal Records _____
Location of Citizenship Papers _____

FAMILY COUNSELLORS (Lawyer, Accountant, Banker, Clergyman, Insurance Representative)

Name	*Address*	*Phone No.*

FAMILY MEMBERS

Name	*Address*	*Phone No.*

SAFETY DEPOSIT BOX

Number _____
Location _____
Location of Keys _____

BANK ACCOUNTS (Savings and Chequing)

Bank	*Branch*	*Account No.*

CREDIT CARDS

Company	*Card Number*

INCOME TAX RETURNS

Location _____

CANCELLED CHEQUES

Location _____

INSURANCE POLICIES (Medical, Life, Property, Liability, Fire, etc.)

Location of Policies _____

LOANS AND MORTGAGES

Name of Creditor	Amount of Loan	Payment Date	Location of Loan Document

SECURITIES (Stocks, Bonds, Annuities, Mutual Funds, Investment Certificates, etc.)

Security	Value	Certificate No.	Location of Security

PENSION PLANS (RRSPs, Life Annuities, Company Plans, etc.)

Name of Plan	Address	Location of Certificates

ACCOUNTS RECEIVABLE

Name of Borrower	Address	Phone No.	Location of Security for Debt

FARM AND BUSINESS INVENTORIES

A complete listing and valuation of all types of assets and liabilities should be prepared. Many farm account books contain an inventory section that can be used for this purpose.

ADDITIONAL INFORMATION

_____
_____
_____
_____

Glossary of Terms

Adjusted Cost Base (ACB)	The starting value or cost to the taxpayer of an asset for the purpose of determining if there is a capital gain or a capital loss when the asset is disposed of. If the asset was owned prior to January 1, 1972, its adjusted cost base is usually its value as of December 31, 1971. If the asset was acquired since 1971, its adjusted cost base is its purchase price. For non-depreciable assets such as land, the adjusted cost based is adjusted by certain costs of selling.
Administrator	An individual appointed by the court to administer an estate where there is no valid will appointing an executor or where the executors appointed were unwilling or unable to act.
Administrator of Estates	The provincial trustee of estates of mentally incompetent individuals.
Agreement for Sale	A sale transaction in which the buyer pays the seller for the asset over a period of time. The buyer takes over use of the asset at the beginning of the agreement but the title is retained by the seller until the payments are complete.
Arms Length	Describes a business transaction between strangers. Related persons are considered for tax purposes to deal with one another at non-arms length.
Buy-Sell Agreement	An agreement that in the case of a certain occurrence or after the passing of a specified period of time one party is obligated to purchase a specified asset from the other party.
Canada Pension Plan	A compulsory federal social security program designed to provide some protection against the financial problems which arise at retirement, disability and death.
Capital Cost Allowance	The income tax deduction from business income to allow for depreciation of machines and buildings due to use and age.
Capital Gain	An increase in value of an asset between two specified occurrences. For tax purposes a capital gain is calculated by subtracting the adjusted cost base of the asset from its value when sold.
Capital Gains Tax	The additional income tax payable when three-quarters of a capital gain is added to a taxpayer's income. Tax is only incurred when the total capital gain exceeds $500,000 for qualifying farm property.
Codicil	A document used to amend or revoke an existing will.
Dependant's Relief Act	A provincial act which ensures that dependant's of a deceased individual will be provided for from his estate sufficiently to ensure their maintenance and support.
Executor	An individual appointed by will to administer the estate of the testator after his death.
Fair Market Value	The trading price when an asset is sold by a willing seller to a willing buyer who are unrelated.
Guaranteed Income Supplement	A supplement to the old age security pension available to pensioners whose total income is low.
Intestate	The term used to describe the estate of an individual who died leaving no valid will.

Intestate Succession Act	A provincial act outlining the rules for the division of an estate where no valid will exists.
Joint Tenancy	A type of co-ownership of property where upon application to the appropriate land titles office, the ownership interest of the property automatically passes to the surviving co-owner(s) upon the death of a co-owner.
Letters of Administration	The document giving an administrator the right to administer the estate.
Life Estate	A trust of property set aside for the lifetime of the beneficiary.
Life Insurance, Convertible	Life insurance of one type which may be converted to another type without the need for a medical examination.
Life Insurance, Endowment	Permanent life insurance where the face value of the policy is paid to the policy holder at the termination of the policy (after a set period of time).
Life Insurance, Level Term	Term insurance where the potential payout upon the death of the policy holder remains constant throughout the life of the policy.
Life Insurance, Limited Payment	Permanent life insurance for the entire life of the policy holder where premiums are paid only for a specified period.
Life Insurance, Permanent	Life insurance with savings.
Life Insurance, Reducing Term	Term insurance where the payout upon the death of the policy holder reduces through the life of the policy.
Life Insurance, Term	Life insurance which covers a specified period of time and which lapses at the end of that period with no cash value to the policy holder. A payout is made if the policy holder dies during the term of the insurance.
Life Insurance, Whole Life	Permanent life insurance for the entire life of the policy holder with premiums in the same amount each year until death or until the policy holder discontinues the policy.
Official Administrator	A designated trust company in a judicial district in Saskatchewan which has the right to proceed with estate settlement if no individuals are willing to accept the responsibility of administering the estate.
Official Guardian	The provincial guardian or trustee of the estate of infant children (i.e., those under 18).
Old Age Security Pension	A federal pension which is available in addition to Canada Pension Plan retirement benefits to Canadians over 65 years of age.
Option to Purchase	An agreement giving one party the first right to purchase an asset owned by the other party.
Probate	The process of confirming through the Surrogate Court the validity of a will and the appointment of an executor.
Registered Retirement Savings Plan	A retirement savings plan which is registered with Revenue Canada and which enables an individual to reduce his immediate taxable income with contributions to the plan.
Renunciation of Administration	A document completed by an executor who is appointed in a will but who does not wish to act as executor.

Reserve	A means of deferring capital gains income where the entire sale price of the asset is not received by the taxpayer in one year.
Rights and Things	Certain rights to income that must be included in the deceased's final income tax filing. For farmers these include grain, livestock, feed and unclipped bond coupons.
Sole Proprietorship	Full ownership of a property by an individual.
Surrogate Court	The court which deals with matters of estate settlement.
Tenancy-in-Common	A type of co-ownership of property where one co-owner's interest in the property can be sold, gifted or bequested to an outside party.
Testator/Testatrix	One who makes a will (testator--male; testatrix--female).
Trust	A fund set aside by an individual and administered by a trustee for the benefit of another.
Will	A signed document in which an individual declares how he wishes his estate to be administered and divided after his death.
Will, Formal	Normally a typewritten will signed by the testator and two witnesses in the presence of one another.
Will, Holograph	A will entirely in the handwriting of the testator and signed by him. It requires no witnesses.

Where to Obtain Additional Information Services*

	Saskatchewan Agriculture and Food	Revenue Canada - Taxation	Health and Welfare Canada	Account -ants	Lawyers	Life Insurance Companies	Trust Companies	Banks, Credit Unions, Investment Companies
General Estate Planning	S			I	S	I	S	I
Registered Retirement Savings Plans	I	I		I		S	S	S
Income Averaging Annuity Contracts	I	I		I		S	S	I
Investments	I					S	S	S
Life Insurance						S		
Canada Pension Plan	I	I	S					
Old Age Security Pension	I		S					
Gifting	I	I		I	S			
Trusts		I					S	
Wills	I	I			S	I	S	I
Title Transfers	I	I			S			
Agreements for Sale	I	I			S			
Partnerships	I	I		S	S			
Corporations	I	I		S	S			
Operating Agreements	I	I		S	S			
Taxation	I	I		S				
Estate Settlement After Death		I		S	S		S	

"I" indicates where further information can readily be obtained. In some cases this includes advice and counselling.

"S" indicates where technical services associated with the particular subject area can be obtained. Information can also be obtained from these sources.

Useful Addresses

Agency	Address	Services
Saskatchewan Agriculture and Food	Farm Management Section Room 329, 3085 Albert Street Regina, Saskatchewan S4S 0B1 (phone 787-5942)	-information and counselling on a variety of farm management related topics
Saskatchewan Rural Development	-farm management agrologists in: -Rosetown (882-4229) -N. Battleford (446-7479) -Swift Current (773-2866) -Tisdale (873-2693) -Weyburn (842-4607) -Yorkton (783-9743)	-bulletins available -information and counselling for a variety of farm management related topics
Revenue Canada Taxation	1955 Smith Street Regina, Sask. S4P 0B1	-income tax information
	- or -	-Canada Pension Plan contributions plan
	Canadian Imperial Bank of Commerce Building 201 - 21st Street E. Saskatoon, Saskatchewan S7K 0A8 (or phone toll free 1-800-552-8031)	
Health and Welfare Canada	1975 Scarth Street Regina, Saskatchewan S4P 3K4 (phone: 780-5631, Canada Pension Plan)	-Canada Pension Plan, Old Age Security, Guaranteed Income

	- or - Room 608, Financial building 230 - 22nd Street E. Saskatoon, Saskatchewan S7K 0E9 (phone: 975-4222, Canada Pension Plan)	
Life Insurance Information Centre	Suite 2500, 20 Queen St. West, Toronto, Ontario M5H 3S2 (phone toll free 1-800 268-8099)	-information on life insurance -pamphlets available
Public Trustees Office	2476 Victoria Avenue Regina, Saskatchewan S4P 3C8 (phone: 787-5440)	-guardian of estates of infant children -administrator of estates of mentally incompetent people
Land Titles Offices	Regional Land Titles Offices located in: -N. Battleford (446-7440) -Regina (787-5513) -Humboldt (682-2325) -Saskatoon (933-5164) -Moose Jaw (694-3600) -Swift Current (778-8200) -Prince Albert (953-3600) -Yorkton (786-1555)	-storage of land titles -registration of mortgages, liens, caveats, etc.
Saskatchewan Farm Ownership Board	3130 - 8th Street E. Saskatoon, Saskatchewan S7K 2H6 (phone: 933-5105)	-administration of Farm Ownership Act

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